

Doha: Dormant but Dangerous: The EU's Treacherous Trade Strategy

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Vittorio Agnoletto, an Italian MD turned European parliamentarian affiliated with the GUE [Left-Green] group, and several Italian NGOs including Punto Rosso, called a conference in Milan over the first weekend in December. The theme was "Fundamental rights and the global market"; the motivation was the Human Rights and Democracy clause for which Agnoletto obtained unanimous approval in the European Parliament. Henceforward, this clause is supposed to figure in all EU trade agreements with all partner countries. This clause won't, of course, solve underlying North-South problems, and it will be tough to make the Commission respect the Parliament's resolution, but it is a starting point for putting people's and society's rights into trade agreements from which they have been singularly and blatantly absent.

Speakers at this conference came from both North and South and about 200 people attended, many from academia or NGOs. My assigned subject was "What next for the World Trade Organisation at the closure of the Doha Round" and this is approximately what I said, with some additions I would have put in if I had been allotted more time.

The World Trade Organisation was created on 1 January 1995 after eight years of negotiations [the "Uruguay Round"] which resulted in a voluminous text—about 800 pages plus thousands of pages of annexes. Nowhere in these pages will you find the smallest allusion to human rights, nor indeed to labour rights or to protection of the environment.

The WTO is an umbrella organisation covering more than two dozen separate agreements on trade areas like industrial goods, services, agriculture or intellectual property but also about standards—for example the "technical barriers to trade" or the "sanitary and phyto-sanitary" measures agreements and the all-important Dispute Resolution Body which is the WTO's judicial arm. The DRB gives it clout in the international arena possessed by no other international organisation. Even the World Bank and the IMF can only intervene forcefully with indebted countries over which they have power, but OECD countries can ignore them—not the case for the DRB.

The WTO progresses through "rounds" or cycles of negotiations. The Doha Round was launched in Doha, Qatar in November 2001, shortly after September 11th, when the then US Trade Representative Robert Zoellick more or less bullied everyone into signing on, giving a dramatic speech about how "they" could destroy the World Trade Towers, but we won't allow them to destroy world trade. This Doha round was supposed to be completed already a couple of years ago. The title of my topic—which I didn't choose— assumes that it has in fact reached a conclusion. My reaction to that is "Not so fast!" The first question is whether Doha is dead, alive or some comatose stage in between. Let's say it's on life support.

At the Hong Kong WTO Ministerial Meeting last year [December 2005], the participants finally cobbled together a last minute agreement which at least stated that the parties would keep negotiating. Member governments did keep on talking, but to no avail and the WTO Director General Pascal Lamy finally called a suspension at the end of last July. WTO agreements are all-or-nothing;

that is, nothing is agreed until everything is [the “single undertaking”] and this one broke down over agricultural subsidies. But it’s a mistake to believe that nothing is happening under WTO auspices. There are several major questions people should know about. Two of them have to do with the General Agreement on Trade in Services, the GATS.

First, Article 21 of GATS deals with the possibility of withdrawing commitments once they have been made under the agreement. GATS works by opening up service sectors to the transnational corporations of other member countries and under the Most Favoured Nation principle, if you open a sector to one, you must open it to all. When the EU was made up of 12 members, it made many services commitments which, for various technical reasons, had to be withdrawn or modified in order to harmonise them with the arrival first of Austria, Finland and Sweden; then with the 10 newcomer countries in 2004. Under GATS, you can’t just change your mind and take back a commitment—you have to give your partners another sector of equal value. Until recently, this article had never been used, but one can see how dangerous it is. To take an extreme example: say a totally neo-liberal government opens all 12 service sectors and all 150-some sub-sectors to foreign service providers. The next government elected is socialist and decides that its predecessor’s course has proved disastrous. Theoretically it couldn’t withdraw any commitments, since it would have no sectors left to open—it would be stuck with the former government’s decision, no matter what the citizens wanted.

In the present case, Peter Mandelson, the EU Trade Commissioner, actually asked 21 countries to request compensation from the European Union because of the changes made to its commitments after the accession of the 13 new members. His purpose seems to have been to prove to all governments how costly it could be to change your mind.

We now learn that negotiations on this matter began in May 2004 and were concluded in late September 2006. These were hidden from the European Parliament and the documents concerning them labelled “Secret”. How, then, do we know the negotiations were concluded and what they entailed? Not thanks to Mandelson but by a press release issued by the US Trade Representative’s office. In it we learn that Europe has made new commitments to “Canada, Hong Kong, Brazil, Japan and 16 other affected Members”, plus naturally the United States; which have resulted in a “meaningful compensation package” and include “new opportunities” in financial services, engineering, computer services, advertising, telecommunications and public utilities. Which public utilities? Electricity? Gas? Water? We don’t know and Mandelson hasn’t told us.

The second ongoing scandal under GATS is the negotiations on “Domestic Regulation”, based on Article VI, 4 which stipulates that governments’ regulations concerning qualifications, standards and licensing in services must not be “more burdensome than necessary”. But who is to decide what is “necessary”? At the WTO, it’s the Dispute Resolution Body. Because the negotiations have not been finalised, no disputes on services have dealt with this so-called “necessity clause”. But we do have the WTO jurisprudence on the same clause when it comes to government regulation of industrial products like tobacco, pharmaceuticals or asbestos. In ten out of eleven cases, the DRB has determined that the regulation challenged by another Member is indeed “more burdensome than necessary” and as such constitutes a disguised barrier to trade. If these Domestic Regulations negotiations are completed in services, we can expect a rash of cases to come before the DRB, trying to tear down governments’ capacity to regulate. Fortunately, the emerging countries like Brazil or Kenya seem to be resisting so far.

Now what about the overall status of the Doha Round? Over the past month in particular, there have been efforts to revive it, by DG Lamy, the chair of the Trade Negotiating Committee and by the various ambassadors chairing the negotiations on agriculture, services, or Non-Agricultural Market Access [NAMA]. They are hosting “fireside chats”, a variant on the familiar “green room” [named

long ago for the colour of the wallpaper in the DG's office] which bring together 20-some of the most important countries. The chairs-ambassadors also practice "confessionals", or one-on-one meetings with the main players in each sector in order to get an idea of what each would give, or take, in exchange for what. Lamy calls this a "suspension of the suspension" and is making no bets on the outcome, so neither should we.

Meanwhile, the EU is concentrating on a whole series of bilateral and plurilateral free trade agreements [FTAs] and Economic Partnership Agreements [EPAs], none of which contain to my knowledge the slightest mention of human rights or democracy, which is not surprising. Our friend Vittorio Agnoletto and the rest of the European Parliament have an uphill fight on their hands if they expect to get one included in any of these documents. The WTO successfully resisted a six year-long effort by the trade unions to get a "social clause" into the agreement; they finally gave up in 2001 after the Doha Round was launched.

These FTAs and EPAs will be even more dangerous for the weaker partners than is the WTO itself because they go faster and further. Insisting on "standstill" from the moment they are signed [no new tariffs, non-tariff barriers or regulations]; they demand not just quick and steep tariff cuts but also concentrate on Peter Mandelson's three Bs, the Beyond [or behind] Borders Barriers. It's important to understand that "trade", which most people still think of as concerning the crossing of national frontiers, now has a far broader definition. It is about deregulation and total market access in all areas of human activity. That is why FTAs and EPAs also contain investment provisions, aimed at eliminating all quantitative or qualitative restrictions on Foreign Direct Investment, including requirements for taking a local partner, or job creation, local content, etc; as well as options for partial or total ownership, no restrictions on the number of investors in a given field and the like. Europe is trying to cover the world with such agreements and so far has negotiations completed or in progress on pretty much all continents although Asia is so far a weak link.

We must hope that the smaller and/or weaker countries will not allow themselves to be bullied. Our friends from the South should know that in the trade area, the EU is very often worse for their interests than the United States. The Trade Commissioner published a statement on trade and competitiveness on 4 October of this year which leaves no doubt as to its strategic intentions. Yes, both the US and the EU will try to get their trading partners in a strangle-hold; yes the EU may do so with more charm and style but don't believe either of them. The only thing that counts is total market access in all areas for European transnationals and investors—anything else is just background noise.

P.S.

* From the TNI website.